

000171

## REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER  
(FOR AUDITOR'S USE ONLY)

N/A

TO:

CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):

City Attorney

3. DATE:

March 23, 2007

4. SUBJECT:

Tobacco Retailer Ordinance – Version D

5. PRIMARY CONTACT (NAME, PHONE, &amp; MAIL STA.)

Linda Peter, 533-6292, MS 59

6. SECONDARY CONTACT (NAME, PHONE, &amp; MAIL STA.)

Anna Lonergan, 533-5838, MS 59

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED



## 8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:  An Ordinance amending the SDMC by adding a section relating to requirements for a police permit for tobacco product sales. Permit fee allows for full cost recovery. See attached Report to Council for details.
DEPT.					
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT					

## 10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>Karen Hummer</i>	4/5/07	8	DEPUTY CHIEF		
2				9	COO		
3				10	CITY ATTORNEY	<i>Linda Peter</i>	4/5/07
4	LIAISON OFFICE			11	ORIG. DEPT	<i>Karen Hummer</i>	4/5/07
5				DOCKET COORD: _____ COUNCIL LIAISON _____			
6				<input checked="" type="checkbox"/> COUNCIL PRESIDENT <i>ms</i>	<input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION		COUNCIL DATE: 7/10/07
7					<input type="checkbox"/> REFER TO: _____		

11. PREPARATION OF:

☐ RESOLUTIONS☒ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

An Ordinance amending the San Diego Municipal Code by adding Sections 33.4501 to 33.4518, titled "Permits for Tobacco Products Sales," relating to requirements for a police permit for tobacco product sales. Permit fee allows for cost recovery of administration and enforcement costs associated with the Ordinance.

11A. STAFF RECOMMENDATIONS:

Adopt the Ordinance.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): ALL DISTRICTS.COMMUNITY AREA(S): COMMUNITIES CITY WIDE.

ENVIRONMENTAL IMPACT: THIS ACTIVITY IS NOT A PROJECT AND, THEREFORE, IS EXEMPT FROM CEQA PURSUANT TO STATE CEQA GUIDELINES, SECTION 15060 (c) (3).

HOUSING IMPACT: N/AOTHER ISSUES: N/A

## EXECUTIVE SUMMARY SHEET

DATE ISSUED: March 23, 2007

REPORT NO.:

ATTENTION:

SUBJECT: Tobacco Retailer Ordinance – Version D

REFERENCE:

REQUESTED ACTION: Adopt the Ordinance amending the San Diego Municipal Code by adding Sections 33.4501 to 33.4518, titled "Permits for Tobacco Products Sales," relating to requirements for police permits for tobacco product sales.

STAFF RECOMMENDATION: Adopt the Ordinance.

SUMMARY: Tobacco use by minors is a public health and safety risk. State laws are insufficient to address tobacco use by minors, and state law authorizes local governments to adopt their own ordinances to provide for the suspension or revocation of a local license for any violation of a state tobacco control law. The proposed ordinance provides for local regulation of tobacco retail businesses by requiring police permits. The proposed ordinance will discourage violations of law which prohibit or discourage the sale or distribution of tobacco products to minors.

FISCAL CONSIDERATIONS: A proposed permit fee of \$163 allows for full cost recovery of administration and enforcement costs related to this ordinance in the first year. Costs will be reviewed annually, and the permit fee will be adjusted, as necessary, to reflect true costs. Costs will be included in the Police Department's fiscal year appropriation.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: In April 2005, the Committee on Public Safety and Neighborhood Services was presented with two versions of a Tobacco Retailer Ordinance, O-2005-65-DRAFT and O-2005-65-DRAFT-Version B. Neither version passed Committee. In July 2006, Version C was presented to the Committee. Version C received enough votes to move forward without recommendation, pending resolution and clarification of several issues. Those issues are addressed in Version D.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: American Lung Association; California Grocers Association; San Diego small business owners

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable): Local retailers will be required to obtain police permits to sell tobacco products.

City Attorney's Office

Michael J. Aguirre

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Originating Department

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City Attorney

000175

**From:** John Rivera  
**To:** Lori Witzel  
**Date:** 7/12/2006 11:46:14 AM  
**Subject:** Fwd: Tobacco Retail Licensing Ordinance Update

Hi Lori,

Could you provide this to Councilmembers with note this just came in. Thx-j

>>> "Molly Bowman" <[mbowman@lungsandiego.org](mailto:mbowman@lungsandiego.org)> 7/12/2006 11:19 AM >>>  
Hi, John!

I look forward to attending this afternoon's committee hearing, and testifying on behalf of the San Diego Tobacco-Free Communities Coalition's Model Ordinance Workgroup.

While we support the initiative to revisit tobacco retail licensing as a policy solution to prevent the sale of tobacco products to children, our workgroup would support the ordinance if it includes of a definitive schedule of penalties, including permit suspension. Based on our policy discussions with the Technical Assistance Legal Center (TALC), a legal clearinghouse, funded by the California Department of Health Services, to provide California communities with free technical assistance on tobacco control policy issues, we believe our concerns could be addressed by inserting a stipulation in the ordinance that explicitly would empower the City Attorney to seek a civil injunction to enforce a violation of the ordinance, or bring a civil suit under the Business and Professions Code sections 17200. Should the City attorney prevail, the penalty schedule would apply to offending retailers (ten days for a first suspension in five years; 30 days for a second suspension in five years; 120 days for a third suspension in five years; and five years for a fourth suspension in five years.)

Our workgroup members also request the incorporation of several other policies into the final version of the tobacco retail licensing ordinance. We outlined our policy recommendations in a letter to the City Attorney, which you will find in the attachment.

I've also included TALC's suggested revisions to the ordinance. You may access a matrix comparing strong local tobacco retailer licensing laws in California by visiting The Center for Tobacco Policy & Organizing's website: <http://www.californialung.org/thecenter/>. The matrix is located under "Local Hot Topics," in the lower right hand corner of the website.

Thank you so much for your consideration, John. Please don't hesitate to

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contact me should you have any questions. I look forward to seeing you  
this afternoon!

Warmest Regards,

Molly

Molly Bowman-Styles

Policy Manager

American Lung Association

2750 Fourth Avenue

San Diego, CA 92103

619-297-3901

[mbowman@lungsandiego.org](mailto:mbowman@lungsandiego.org)

July 6, 2006

The Honorable Mike Aguirre  
City Attorney  
City of San Diego  
1200 Third Avenue, #1620  
San Diego, CA 92101

Dear Mr. Aguirre:

Thank you so much for taking the initiative to revisit tobacco retail licensing as a policy solution to prevent the sale of tobacco products to youth. Your commitment to protecting children from illegal tobacco sales – and a potential life-time addiction to nicotine – is commendable. We are pleased to have the opportunity to work with you, Councilmember Young, and other council members on this vital effort.

The American Lung Association and our partners in the Tobacco-Free Communities Coalition have been working closely with elected officials to reduce the alarming rates of illegal tobacco sales to youth in communities across San Diego County. We share your belief that the city of San Diego's 43.6 percent illegal sales rate of tobacco to children is unacceptable.

Research in California has shown that effective local tobacco retail licensing laws are the best way to hold accountable unscrupulous retailers who sell tobacco products to minors. On behalf of the thirty agency members of Tobacco-Free Communities Coalition, our Model Ordinance Workgroup has analyzed the proposed ordinance, and its findings are presented in this letter.

#### **Position of Tobacco-Free Communities Coalition**

The next meeting of the coalition will be July 20, so it has not been possible to adopt a position in time for the July 12<sup>th</sup> meeting of the PS & NS Committee. However, the Model Ordinance Workgroup recommends the following position:

#### **Ordinance Strengths**

The Center for Tobacco Policy & Organizing has been funded by the state of California to identify which components in tobacco retail licensing policies contribute the most to reducing illegal sales. We applaud the proposed ordinance for including two of the four components recommended by the Center:

- *Requirements that all retailers who sell tobacco products must obtain a license and renew it annually.*
- *Coordination of tobacco regulations so that a violation of any existing local, state or federal regulation violates the license.*

Our Workgroup members also appreciate the inclusion of provisions that will further discourage violations of tobacco control laws and reduce problems associated with drug paraphernalia:

- Banning mobile tobacco sales
- Extensive background checks of potential tobacco retailers
- Requiring the conspicuous display of information about how to report violations of tobacco control laws to the Chief of Police
- The revocation of a business license if a person possesses the intent to furnish drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance
- Requiring an annual summary report, to the Public Safety and Neighborhood Services Committee, of activity related to the administration and enforcement of the ordinance; and accounting of all funds received and used for the administration and enforcement of the ordinance; and the estimated rate of illegal sales of tobacco products to minors within the City of San Diego

#### **Ordinance Weaknesses**

In its current form, the ordinance does not include the following two policy components that the Center has identified:

- *A fee set high enough to sufficiently fund an effective program, including administration of the program and enforcement efforts. An enforcement plan, that includes compliance checks, should be clearly stated.*

The Model Ordinance Work Group understands the fiscal constraints and staffing shortages experienced by the San Diego Police Department. Although we are pleased that the proposed \$30 annual tobacco retailer permit fee has been increased to \$100, we would appreciate receiving a summary of how the revenue generated by the fee would be allocated between administration and enforcement. In addition, since the Police Chief is afforded exclusive responsibility for the enforcement provisions set forth in the draft ordinance, the Workgroup would like to understand the specific role the city attorney will play in discouraging the sale of tobacco to minors.

- *A financial deterrent, through fines and penalties, including the suspension and revocation of the license. Fines and penalties should be outlined in the ordinance.*

Municipal Code Article 3, Division 4, spells out the criminal penalties and regulatory actions that may be taken against violators of the proposed ordinance. Lacking a defined penalty structure, these actions are left to the sole

discretion of the Police Chief. In order to provide certainty to the level of enforcement discipline, Model Ordinance Workgroup members request the incorporation of the City of Vista or City of El Cajon's Suspension/Revocation Schedule into the draft ordinance. (Please refer to pages 5 and 8 of *Strong Local Tobacco Retail Licenses in California: A Comparison*.)

Additionally, the ordinance could stipulate the prerogative of the City Attorney to seek a civil injunction to enforce the ordinance, or to prohibit a violation of a police permit, or may bring a civil suit under Business and Professions Code sections 17200, et seq. – Unlawful, Unfair or Fraudulent Business Act or Practice. (Please see page 14 of *Technical Assistance Legal Center's (TALC) suggested revision to draft ordinance*.)

The Model Ordinance Workgroup also recommends the inclusion of the following provisions:

- Require that clerks be the minimum legal age to purchase tobacco products (currently 18 years old)
- Require retailers to check the age of purchasers who "reasonably appear" to be under the age of 27
- Require that all tobacco-related products and paraphernalia be removed from public view during periods of suspension and revocation
- Prohibit tobacco retailers from providing a venue for smoking or consuming any tobacco product anywhere at the permitted location, either outdoors or indoors. (This would help control the growing menace of hookah lounges)
- Provide for alternative enforcement mechanisms, such as empowering Neighborhood Code Compliance officers to conduct store inspections and cite offending tobacco retailers

### Conclusions

Although we recognize the commendable provisions set forth in the proposed ordinance, the Model Ordinance Workgroup cannot support it without the incorporation of a definitive schedule of penalties, including permit suspension and revocation. Based on our discussions with Technical Assistance Legal Center (TALC), a legal clearinghouse, funded by the California Department of Health Services, to provide California Communities with free technical assistance on tobacco control policy issues, we believe our concerns could be addressed by adding the following language to the draft ordinance:

### §33.4515 Civil Suit

- (a) Notwithstanding any other provision of this Division or this Code, the City Attorney or City Prosecutor [NOTE: define these in definitions section?] may seek a civil injunction to

enforce this Division or to prohibit a violation of a *police permit* or may bring a civil suit under Business and Professions Code sections 17200, et seq. (unlawful, unfair or fraudulent business act or practice) for a violation of this Division or a violation of a *police permit*. If the City Attorney or City Prosecutor prevails, in addition to any other remedies ordered by the court, any *police permit* at issue shall be suspended for a minimum of: ten days for a first suspension in five years; 30 days for a second suspension in five years; 120 days for a third suspension in five years; and five years for a fourth suspension in five years. The City Attorney and City Prosecutor shall recoup any expenditure made to enforce this Division from the permit fee proceeds and the permit fee shall be calculated to include such reimbursements. [NOTE: This gives the city attorney an express role in enforcement, to back up any strong talk to the retailers.]

- (b) Any violation of this Division or of a *police permit* is hereby declared to be a public nuisance. [NOTE: This adds another enforcement possibility: civil suit for nuisance abatement.]

The Technical Assistance Legal Center's (TALC) suggested revisions to the ordinance, and The Center for Tobacco Policy & Organizing comparison of strong local tobacco retailer licensing laws in California, are enclosed for your reference.

Thank you so much for your consideration, Mr. Aguirre. We are confident you will appreciate our efforts to establish an effective tobacco retail licensing law in the City of San Diego that will protect children, from illegal tobacco sales, for years to come.

Please don't hesitate to contact us should you have any questions.



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Warm Regards,

Debra Kelley  
V.P. of Government Relations

Molly Bowman-Styles  
Policy Manager

Attachments:

*Strong Local Tobacco Retailer Licensing Laws in California*, The Center for Tobacco Policy & Organizing

*Suggested Revision to Draft Tobacco Retail Licensing Ordinance*, Technical Assistance Legal Center (TALC)

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, OF  
THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION  
45, SECTIONS 33.4501 TO 33.4518, TITLED "PERMITS FOR  
TOBACCO PRODUCT SALES," RELATING TO  
REQUIREMENTS FOR PERMITS FOR TOBACCO PRODUCT  
SALES

WHEREAS, according to the National Institutes of Health, minors face social, psychological, and educational challenges, exposing them to various risk factors for drug abuse, including the underage use of legal drugs like tobacco; and

WHEREAS, minors who use tobacco products face profound consequences, including illness, cancer, addiction, increased drug use, poor school performance, and a host of other similar maladies; and

WHEREAS, according to the American Cancer Society, nearly all first use of tobacco products by minors occurs before high school graduation, and if such use is curtailed, then minors are likely to not use tobacco at all; and

WHEREAS, state law (Penal Code section 308) prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products to minors; and

WHEREAS, state law requires tobacco retailers to check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Business and Professions Code

section 22956) and provides procedures for onsite sting inspections of tobacco retailers using persons under 18 years of age (Business and Professions Code section 22952); and

WHEREAS, despite these restrictions, minors continue to obtain cigarettes and other tobacco products at alarming rates; and

WHEREAS, a 2004 purchase survey by the American Lung Association of San Diego and Imperial Counties showed that 43.6 percent of 264 stores surveyed in the City of San Diego sell cigarettes to minors; and

WHEREAS, the City Council of the City of San Diego has a substantial interest in promoting compliance with state law prohibiting the sale of cigarettes and tobacco products to minors; promoting compliance with federal, state, and local laws intended to discourage the purchase of tobacco products by minors; and in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the California courts in cases such as *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985) and *Bravo Vending v. City of Mirage*, 16 Cal. App. 4<sup>th</sup> 383 (1993), have affirmed the power of local governments to regulate business activity in order to discourage violations of the law; and

WHEREAS, state law (Health and Safety Code section 11364.7) authorizes revocation of a business license if a person possesses with intent to furnish drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance; and

WHEREAS, State Assembly Bill 71, chaptered on October 12, 2003, (Business and Professions Code section 22971.3) created a state licensing program for the sale of tobacco

products and authorizes local governments to adopt their own ordinances to provide for the suspension or revocation of a local license for any violation of a state tobacco control law;

WHEREAS, the City Council of the City of San Diego finds and declares that the purpose of the ordinance is:

- (1) To regulate tobacco retail businesses by requiring police permits; and
- (2) To discourage violations of law which prohibit or discourage the sale or distribution of tobacco products to minors; and
- (3) To protect the health, welfare, and safety of minors; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 3, Article 3, of the San Diego Municipal Code be and is hereby amended by adding Division 45, Sections 33.4501 through 33.4518, titled "Permits for Tobacco Product Sales," to read as follows:

**§33.4501 Purpose and Intent**

It is the purpose and intent of this Division to provide for local regulation of tobacco retail businesses by requiring police permits. The intent is to discourage violations of law prohibiting the sale or distribution of tobacco products to minors to protect their health, welfare, and safety. It is also the intent that all costs associated with the administration and enforcement of this Division be borne by tobacco retailer applicants and permittees.

**§33.4502 Definitions**

Except as otherwise provided, for purposes of this Division:

"*Person*" has the same meaning as used in Section 11.0210.

"*Police permit*" has the same meaning as used in Municipal Code section 33.0201. For purposes of this Division, the City Treasurer may endorse a business tax certificate with "*Tobacco Retailer Endorsement*" indicating a *police permit* to operate as a *tobacco retailer* has been issued.

"*Tobacco products*" means any substance containing tobacco leaf, including, but not limited to, cigarettes, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco.

"*Tobacco retailer*" means any *person* who owns or operates, in whole or in part, a business for profit or not for profit who engages in *tobacco retailing*.

"*Tobacco retailing*" means selling, offering for sale, or offering to exchange for any form of consideration, tobacco, *tobacco products* or tobacco paraphernalia.

"*Tobacco retailer endorsement*" shall have the same meaning as "*Police Permit*" except that it may also be issued by the City Treasurer.

**§ 33.4503 Police Permit Required for Tobacco Retailer**

- (a) It is unlawful for any *person* to operate as a *tobacco retailer* without a *police permit*.
- (b) It is unlawful for any *person* to engage in *tobacco retailing* unless the owner or operator has been issued a *police permit* to operate as a *tobacco retailer* at that location.
- (c) A *tobacco retailer* shall obtain a separate *police permit* for each fixed location from which he or she engages in *tobacco retailing*.

- (d) No *police permit* shall be issued for any *person* operating as a *tobacco retailer* at any location other than a fixed location.
- (e) This section does not apply to sales or exchanges not made to the public.

**§33.4504      Enforcement Authority**

- (a) The administration and enforcement of this Division shall be divided between the City Treasurer and the *Chief of Police*.  
Subject to approval from the *Chief of Police*, the City Treasurer shall be responsible for accepting applications for a *police permit* to operate as a *tobacco retailer*, and for issuing the permit by endorsing the applicant's business tax certificate to indicate that a *police permit* has been issued authorizing the *permittee* to operate a *tobacco retailing* business. The *Chief of Police* shall be responsible for determining the fitness of applicants for a *police permit* to operate as a *tobacco retailer*, investigating any violations of this Division, and for taking administrative action against any *police permit* issued under this Division.
- (b) The City Treasurer shall accept an application to operate as a *tobacco retailer* and, subject to approval from the *Chief of Police*, endorse a *tobacco retailer's* business tax certificate with "*Tobacco Retailer Endorsement*," indicating a *police permit* to operate as a *tobacco retailer* has been issued.

- (c) Any information provided to or gathered by the City Treasurer under this Division shall also be shared with and made available to the *Chief of Police*.

**§33.4505 Tobacco Retailer Permit Application Contents**

- (a) Each applicant for a *police permit* to operate as a *tobacco retailer* shall furnish the following information to the City Treasurer:
  - (1) The full true name and any other names ever used by the applicant.
  - (2) The current residential address and telephone number of the applicant.
  - (3) The address of the proposed *tobacco retailer* business location.
  - (4) Each residential address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each address.
  - (5) All fictitious business names ever used by applicant and the respective addresses of those businesses.
  - (6) Written proof that the applicant is at least eighteen years of age.
  - (7) A valid social security number.
  - (8) Applicant's height, weight, and color of eyes and hair.
  - (9) Photographs of the applicant as specified by the *Chief of Police*.

- (10) Applicant's business, occupation, and employment history for the five years immediately preceding the date of application, including addresses and dates of employment.
- (11) Whether the applicant has ever had any *license* or *permit* issued by any agency or board, or any city, county, state or *federal* agency suspended or revoked, or has had any professional or vocational *license* or *permit* suspended or revoked within five years immediately preceding the application, and the reason for the suspension or revocation.
- (12) All criminal *convictions*, including those dismissed pursuant to Penal Code section 1203.4, except traffic infractions, and a statement of the dates and places of such *convictions*.
- (13) The name and address of the current owner and lessor of the real property upon which the proposed *tobacco retailing* business is to be conducted, and a copy of the lease or rental agreement.
- (14) All business tax certificates.
- (15) Information regarding *licenses* required under the "Cigarette and Tobacco Products Licensing Act of 2003," found in Business and Professions Code sections 22970, et seq., including, but not limited to, copies of applications for



*licenses, licenses* issued, and any documentation regarding the reasons for the denial of such *license*.

- (16) Such other identification and information, including fingerprints, as may be required in order to discover the truth of the matters herein specified as required to be set forth in the application.

- (b) In addition to the information required by Municipal Code section 33.4505(a), an applicant for a *tobacco retailing permit* shall furnish the following information to the City Treasurer:

- (1) If the applicant is a corporation, the name of the corporation exactly as shown in its Articles of Incorporation or Charter, together with the state and date of incorporation, and names and residential addresses of each of its current officers and directors, and of each stockholder holding more than 25 percent of the stock of the corporation;
- (2) If the applicant is a partnership, the name and residential address of each of the partners, including limited partners;
- (3) If the applicant is a limited partnership, a copy of the limited partnership's certificate of limited partnership as filed with the County Clerk;

- (4) If one or more of the limited partners is a corporation, the applicant shall provide the information about that partner required by Municipal Code section 33.4505(b)(1);
- (5) If the applicant is a corporation or partnership, the name of the responsible managing officer.
- (c) An applicant for a *police permit* to operate as a *tobacco retailer* shall submit a signed declaration certifying that he or she has not been convicted of or faced administrative action based on violations of the offenses listed in Municipal Code section 33.4510.

**§33.4506 Corporate Officers and Partners Deemed Applicants**

Each corporate officer or partner of a *tobacco retailing* business is deemed an applicant and each shall provide the information required in Municipal Code section 33.4505.

**§33.4507 Designation of Responsible Managing Officer, Signature on Applications.**

An applicant that is a corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. The responsible managing officer may complete and sign all applications on behalf of the corporate officers and partners.

**§33.4508 Proof of State Licenses, Permits, and Certifications Required Before Issuance of Tobacco Retailer Permit**

In addition to the requirements of Municipal Code section 33.4505, any *person* desiring a *police permit* to operate as a *tobacco retailer* shall furnish to the City Treasurer copies of all state *licenses, permits*, and certifications related to the sale of *tobacco products* and alcoholic beverages at the fixed location of the proposed *tobacco retailing* business.

**§33.4509 Investigation Prior to Issuance of Tobacco Retailer Permit**

- (a) The *Chief of Police*, or other designated official, shall make an investigation as may be deemed sufficient as stated in Municipal Code section 33.0301 to determine an applicant's fitness to operate as a *tobacco retailer*. The *Chief of Police* shall have authority to grant or deny a *police permit*, and to determine whether to take administrative action against a *police permit* under this Division.
- (b) An investigation for a permit to operate as a *tobacco retailer* shall be conducted as prescribed in Municipal Code sections 33.0302, 33.0303(a), 33.0304, 33.0306, 33.0307, 33.0308, 33.0309, 33.0310, 33.0311, 33.0312, and 33.0313.

**§33.4510 Grounds for Denial of Tobacco Retailer Permit**

In addition to the grounds for denial stated in Municipal Code section 33.0305(a)-(f), an application for a *police permit* to operate as a *tobacco retailer* shall be denied for any of the following reasons: The applicant has within five years immediately preceding the date of the filing of the application been *convicted* of, suffered any civil penalty, or faced

administrative action against any type of *license* for violations of any tobacco control law, including, but not limited to, the following offenses: Penal Code section 308, Business and Professions Code sections 22950, et seq. (“Stop Tobacco Access to Kids Enforcement Act” or the “STAKE Act”), Business and Professions Code sections 22970, et seq. (“Cigarette and Tobacco Products Licensing Act of 2003”), or a charge of violating a lesser-included or lesser-related offense including, but not limited to, Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed in this section.

**§33.4511 Right to Appeal Denial of Tobacco Retailer Permit**

Any applicant denied a permit to operate as a *tobacco retailer* shall be afforded an appeal as prescribed in Municipal Code sections 33.0501, 33.0502, 33.0503, 33.0504, 33.0505, and 33.0508.

**§33.4512 Permit Fees**

- (a) All costs associated with administration and enforcement of this Division including, but not limited to, investigating *permit* applications, processing *permit* applications, inspecting, regulating, and enforcing this Division, and providing for appeals, shall be borne by applicants and *permittees*. The Mayor shall assess a fee for a *police permit* to operate as a *tobacco retailer* according to the schedule set in the City Clerk’s Composite Rate Book. Fees will be reviewed annually.
- (b) A *permit* issued under this Division shall be valid for a period of one year from the date of issuance.

## §33.4513 Tobacco Retailer Operating Requirements

- (a) A *tobacco retailer* shall keep and post his or her *police permit*, issued under this Division, in the manner prescribed in Municipal Code sections 33.0105(a) and (c). This subsection is regulatory only.
- (b) *Tobacco retailers* shall not allow, at any location for which they have a *police permit* to operate as a *tobacco retailer*, a violation of any tobacco control law including, but not limited to, the offenses listed in Municipal Code section 33.4510. *Tobacco retailers* shall be responsible for the acts of others who violate tobacco control laws at any location for which the *tobacco retailer* possesses a *police permit* to operate as a *tobacco retailer*. This subsection is regulatory only.
- (c) A *tobacco retailer* shall display in a conspicuous and prominent location near *tobacco products*, information, in a manner established by the *Chief of Police*, on how to report violations of tobacco control laws including, but not limited to, reporting sales of *tobacco products* to minors, to the *Chief of Police*.
- (d) Clerks who transact *tobacco products* sales in *tobacco retailer* establishments shall themselves be the minimum legal age to purchase *tobacco products* (currently 18 years of age). This subsection is regulatory only.

- (e) *Tobacco retailers* shall check the age of purchasers of *tobacco products* who reasonably appear to be under the age of 27. This subsection is regulatory only.

**§33.4514 Penalties and Regulatory Action**

- (a) All penalties and regulatory action related to a *police permit* issued to operate as a *tobacco retailer* shall be conducted as prescribed in Municipal Code sections 33.0401 to 33.0406.
- (b) If a *police permit* issued under this Division is suspended or revoked, the *permittee* shall post, consistent with section 33.4513(a), written notice of such revocation for the duration of the suspension or revocation with their business tax certificate showing a *tobacco retailer endorsement*.
- (c) If a *police permit* issued under this Division is suspended or revoked, all *tobacco products* and tobacco paraphernalia shall be removed from public view for the duration of the suspension or revocation.

**§33.4515 Additional Penalties**

Pursuant to Health and Safety Code section 11364.7, a business license shall be revoked if a *person* possesses with intent to furnish drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

**§33.4516 Tobacco Retailer Permit Not Transferable**

*A police permit* issued under this Division is not transferable.

**§33.4517 Grandfather Clause**

Notwithstanding Section 33.4510, *convictions* for offenses listed in Section 33.4510 shall not be used to deny an application for a *police permit* under this Division if the date of the *conviction* was prior to the passage of this Division.

**§33.4518 Reporting**

The *Chief of Police* shall, on a yearly basis or as requested by the Public Safety and Neighborhood Services Committee, report to the Public Safety and Neighborhood Services Committee the following information:

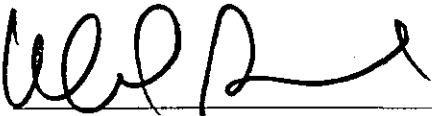
- (a) A summary of activity related to the administration and enforcement of this Division; and
- (b) An accounting of all funds received and used for the administration and enforcement of this Division; and
- (c) The estimated rate of illegal sales of *tobacco products* to minors within the City of San Diego.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

000197

Section 3. This ordinance shall take effect and be in force on the one hundred and eightieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By   
Michael J. Aguirre  
City Attorney

LLP  
03/23/07  
Or.Dept:Police  
O-2007-128

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor



## CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

EFFECTIVE DATE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, OF  
THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION  
45, SECTIONS 33.4501 TO 33.4518, TITLED "PERMITS FOR  
TOBACCO PRODUCT SALES," RELATING TO  
REQUIREMENTS FOR PERMITS FOR TOBACCO PRODUCT  
SALES

This ordinance amends the Municipal Code by adding Division 45, Sections 33.4501 to 33.4518, relating to requirements for permits for tobacco product sales. State Assembly Bill 71, codified in California Business and Professions Code section 22971.3, created a state licensing program for the sale of tobacco products, and authorizes local governments to adopt their own ordinances to provide for the suspension or revocation of a local license for any violation of a state tobacco control law.

This ordinance provides for local regulation of tobacco retail businesses by requiring police permits. The intent is to discourage violations of law prohibiting the sale or distribution of tobacco products to minors to protect their health, welfare, and safety. It is also the intent that all costs associated with the administration and enforcement of this Division be borne by tobacco retailer applicants and permittees.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its final passage, since a written copy was made available to the City Council and the public prior to the day of passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of the ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

LLP  
03/23/07  
Or.Dept:CA  
O-2007-128

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, OF  
THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION  
45, SECTIONS 33.4501 TO 33.4519, TITLED "PERMITS FOR  
TOBACCO PRODUCT SALES," RELATING TO  
REQUIREMENTS FOR PERMITS FOR TOBACCO PRODUCT  
SALES

WHEREAS, according to the National Institutes of Health, young people entering high school face social, psychological, and educational challenges, exposing them to various risk factors for drug abuse, including the underage use of legal drugs like tobacco; and

WHEREAS, minors who use tobacco products face profound consequences, including illness, cancer, addiction, increased drug use, poor school performance, and a host of other similar maladies; and

WHEREAS, according to the American Cancer Society, nearly all first use of tobacco products by minors occurs before high school graduation, and if such use is curtailed, then minors are likely to not use tobacco at all; and

WHEREAS, state law (Penal Code section 308) prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products to minors; and

WHEREAS, state law requires tobacco retailers to check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Business and Professions Code

section 22956) and provides procedures for onsite sting inspections of tobacco retailers using persons under 18 years of age (Business and Professions Code section 22952); and

WHEREAS, despite these restrictions, minors continue to obtain cigarettes and other tobacco products at alarming rates; and

WHEREAS, a 2004 purchase survey by the American Lung Association of San Diego and Imperial Counties showed that 43.6 percent of 264 stores surveyed in the City of San Diego sell cigarettes to minors; and

WHEREAS, the City Council of the City of San Diego has a substantial interest in promoting compliance with state law prohibiting the sale of cigarettes and tobacco products to minors; promoting compliance with federal, state, and local laws intended to discourage the purchase of tobacco products by minors; and in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the California Courts in cases such as *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985) and *Bravo Vending v. City of Mirage*, 16 Cal. App. 4<sup>th</sup> 383 (1993), have affirmed the power of local governments to regulate business activity in order to discourage violations of the law; and

WHEREAS, state law (Health and Safety Code section 11364.7) authorizes revocation of a business license if a person possesses with intent to furnish drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance; and

WHEREAS, State Assembly Bill 71, chaptered on October 12, 2003, (Business and Professions Code section 22971.3) created a state licensing program for the sale of tobacco

products and authorizes local governments to adopt their own ordinances to provide for the suspension or revocation of a local license for any violation of a state tobacco control law;

WHEREAS, the City Council of the City of San Diego finds and declares that the purpose of the ordinance is:

- (1) To regulate tobacco retail businesses by requiring police permits; and
- (2) To discourage violations of law which prohibit or discourage the sale or distribution of tobacco products to minors; and
- (3) To protect the health, welfare, and safety of minors; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 3, Article 3, of the San Diego Municipal Code be and is hereby amended by adding Division 45, Sections 33.4501 through 33.4519, titled "Permits for Tobacco Product Sales," to read as follows:

**§33.4501 Purpose and Intent**

It is the purpose and intent of this Division to provide for local regulation of tobacco retail businesses by requiring police permits. The intent is to discourage violations of law prohibiting the sale or distribution of tobacco products to minors to protect their health, welfare, and safety. It is also the intent that all costs associated with the administration and enforcement of this Division be borne by tobacco retailer applicants and permittees.

**§33.4502 Definitions**

Except as otherwise provided, for purposes of this Division:

"*Person*" has the same meaning as used in Section 11.0210.

"*Police permit*" has the same meaning as used in Municipal Code section 33.0201. For purposes of this Division, the City Treasurer may endorse a business tax certificate with "*Tobacco Retailer Endorsement*" indicating a police permit to operate as a *tobacco retailer* has been issued.

"*Tobacco products*" means any substance containing tobacco leaf, including, but not limited to, cigarettes, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco.

"*Tobacco retailer*" means any *person* who owns or operates, in whole or in part, a business for profit or not for profit who engages in *tobacco retailing*.

"*Tobacco retailing*" means selling, offering for sale, or offering to exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia.

"*Tobacco retailer endorsement*" shall have the same meaning as "*Police Permit*" except that it may also be issued by the City Treasurer.

**§ 33.4503 Police Permit Required for Tobacco Retailer**

- (a) It is unlawful for any *person* to operate as a *tobacco retailer* without a *police permit*.
- (b) It is unlawful for any *person* to engage in *tobacco retailing* unless the owner or operator has been issued a *police permit* to operate as a *tobacco retailer* at that location.
- (c) A *tobacco retailer* must obtain a separate *police permit* for each fixed location from which he or she engages in *tobacco retailing*.

- (d) No *police permit* shall be issued for any *person* operating as a *tobacco retailer* at any location other than a fixed location.
- (e) This section does not apply to sales or exchanges not made to the public.

**§33.4504      Enforcement Authority**

- (a) The administration and enforcement of this Division shall be divided between the *Chief of Police* and the City Treasurer. The *Chief of Police* shall be responsible for determining the fitness of applicants for a *police permit* to operate as a *tobacco retailer*, investigating any violations of this Division, and for taking administrative action against any *police permit* issued under this Division. Subject to approval from the *Chief of Police*, the City Treasurer is responsible for accepting applications for a police permit to operate as a *tobacco retailer*, and for issuing the permit by endorsing the applicant's business tax certificate to indicate that a *police permit* has been issued authorizing the *permittee* to operate a *tobacco retailing* business.
- (b) The City Treasurer may accept an application to operate as a *tobacco retailer* and, subject to approval from the *Chief of Police*, endorse a *tobacco retailer's* business tax certificate with "*Tobacco Retailer Endorsement*," indicating a *police permit* to operate as a *tobacco retailer* has been issued.

- (c) Any information provided to or gathered by the City Treasurer under this Division shall also be shared with and made available to the *Chief of Police*.

**§33.4505 Tobacco Retailer Permit Application Contents**

- (a) Each applicant for a *police permit* to operate as a *tobacco retailer* shall furnish the following information to the City Treasurer:
- (1) The full true name and any other names ever used by the applicant.
  - (2) The current residential address and telephone number of the applicant.
  - (3) The address of the proposed *tobacco retailer* business location.
  - (4) Each residential address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each address.
  - (5) All fictitious business names ever used by applicant and the respective addresses of those businesses.
  - (6) Written proof that the applicant is at least eighteen years of age.
  - (7) A valid social security number.
  - (8) Applicant's height, weight, and color of eyes and hair.
  - (9) Photographs of the applicant as specified by the *Chief of Police*.



- (10) Applicant's business, occupation, and employment history for the five years immediately preceding the date of application, including addresses and dates of employment.
- (11) Whether the applicant has ever had any *license* or *permit* issued by any agency or board, or any city, county, state or federal agency suspended or revoked, or has had any professional or vocational *license* or *permit* suspended or revoked within five years immediately preceding the application, and the reason for the suspension or revocation.
- (12) All criminal *convictions*, including those dismissed pursuant to Penal Code section 1203.4, except traffic infractions, and a statement of the dates and places of such *convictions*.
- (13) The name and address of the current owner and lessor of the real property upon which the proposed *tobacco retailing* business is to be conducted, and a copy of the lease or rental agreement.
- (14) All business tax certificates.
- (15) Information regarding *licenses* required under the "Cigarette and Tobacco Products Licensing Act of 2003," found in Business and Professions Code sections 22970, et seq., including, but not limited to, copies of applications for

*licenses, licenses* issued, and any documentation regarding the reasons for the denial of such *license*.

- (16) Such other identification and information, including fingerprints, as may be required in order to discover the truth of the matters herein specified as required to be set forth in the application.

(b) In addition to the information required by Municipal Code section 33.4505(a), an applicant for a *tobacco retailing permit* must furnish the following information to the City Treasurer:

- (1) If the applicant is a corporation, the name of the corporation exactly as shown in its Articles of Incorporation or Charter, together with the state and date of incorporation, and names and residential addresses of each of its current officers and directors, and of each stockholder holding more than 25 percent of the stock of the corporation;
- (2) If the applicant is a partnership, the name and residential address of each of the partners, including limited partners;
- (3) If the applicant is a limited partnership, a copy of the limited partnership's certificate of limited partnership as filed with the County Clerk;

- (4) If one or more of the limited partners is a corporation, the applicant shall provide the information about that partner required by Municipal Code section 33.4505(b)(1);
- (5) If the applicant is a corporation or partnership, the name of the responsible managing officer.
- (c) An applicant for a *police permit* to operate as a *tobacco retailer* shall submit a signed declaration certifying that he or she has not been convicted of or faced administrative action based on violations of the offenses listed in Municipal Code section 33.4510. It is unlawful to submit a false, untruthful, or misleading declaration.

**§33.4506 Corporate Officers and Partners Deemed Applicants**

Each corporate officer or partner of a *tobacco retailing* business is deemed an applicant and each must provide the information required in Municipal Code section 33.4505.

**§33.4507 Designation of Responsible Managing Officer, Signature on Applications**

An applicant that is a corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. The responsible managing officer may complete and sign all applications on behalf of the corporate officers and partners.

**§33.4508****Proof of State Licenses, Permits, and Certifications Required Before Issuance of Tobacco Retailer Permit**

In addition to the requirements of Municipal Code section 33.4505, any *person* desiring a *police permit* to operate as a *tobacco retailer* shall furnish to the City Treasurer all state *licenses, permits*, and certifications related to the sale of *tobacco products* and alcoholic beverages at the fixed location of the proposed *tobacco retailing* business.

**§33.4509****Investigation Prior to Issuance of Tobacco Retailer Permit**

- (a) The *Chief of Police*, or other designated official, shall make an investigation as may be deemed sufficient as stated in Municipal Code section 33.0301 to determine an applicant's fitness to operate as a *tobacco retailer*. The *Chief of Police* shall have authority to grant or deny a *police permit*, and to determine whether to take administrative action against a *police permit* under this Division.
- (b) An investigation for a permit to operate as a *tobacco retailer* shall be conducted as prescribed in Municipal Code sections 33.0302, 33.0303(a), 33.0304, 33.0306, 33.0307, 33.0308, 33.0309, 33.0310, 33.0311, 33.0312, and 33.0313.

**§33.4510****Grounds for Denial of Tobacco Retailer Permit**

In addition to the grounds for denial stated in Municipal Code section 33.0305(a)-(f), an application for a *police permit* to operate as a *tobacco retailer* shall be denied for any of the following reasons: The applicant has within five years immediately preceding the date of the filing of the application been *convicted* of, suffered any civil penalty, or faced

administrative action against any type of *license* for violations of any tobacco control law, including, but not limited to, the following offenses: Penal Code section 308, Business and Professions Code sections 22950, et seq. (“Stop Tobacco Access to Kids Enforcement Act” or the “STAKE Act”), Business and Professions Code sections 22970, et seq. (“Cigarette and Tobacco Products Licensing Act of 2003”), or a charge of violating a lesser-included or lesser-related offense including, but not limited to, Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed in this section.

**§33.4511 Right to Appeal Denial of Tobacco Retailer Permit**

Any applicant denied a permit to operate as a *tobacco retailer* shall be afforded an appeal as prescribed in Municipal Code sections 33.0501, 33.0502, 33.0503, 33.0504, 33.0505, and 33.0508.

**§33.4512 Permit Fees**

- (a) All costs associated with administration and enforcement of this Division including, but not limited to, investigating *permit* applications, processing *permit* applications, inspecting, regulating, and enforcing this Division, and providing for appeals, shall be borne by applicants and *permittees*. The City Manager may assess a fee for a *police permit* to operate as a *tobacco retailer* according to the schedule set in the City Clerk’s Composite Rate Book.
- (b) A *permit* issued under this Division shall be valid for a period of one year from the date of issuance.

**§33.4513 Tobacco Retailer Operating Requirements**

- (a) A *tobacco retailer* must keep and post his or her *police permit*, issued under this Division, in the manner prescribed in Municipal Code sections 33.0105(a) and (c). This subsection is regulatory only.
- (b) *Tobacco retailers* shall not allow, at any location for which they have a *police permit* to operate as a *tobacco retailer*, a violation of any tobacco control law including, but not limited to, the offenses listed in Municipal Code section 33.4510. *Tobacco retailers* shall be responsible for the acts of others who violate tobacco control laws at any location for which the *tobacco retailer* possesses a *police permit* to operate as a *tobacco retailer*. This subsection is regulatory only.
- (c) A *tobacco retailer* must display in a conspicuous and prominent location near *tobacco products*, information, in a manner established by the *Chief of Police*, on how to report violations of tobacco control laws including, but not limited to, reporting sales of *tobacco products* to minors, to the *Chief of Police*.

**§33.4514 Penalties and Regulatory Action**

- (a) All penalties and regulatory action related to a *police permit* issued to operate as a *tobacco retailer* shall be conducted as prescribed in Municipal Code sections 33.0401 to 33.0406.

- (b) If a *police permit* issued under this Division is suspended or revoked, the *permittee* must post, consistent with section 33.4513(a), written notice of such revocation for the duration of the suspension or revocation with their business tax certificate showing a *tobacco retailer* endorsement.

**§33.4515 Additional Penalties**

Pursuant to Health and Safety Code section 11364.7, a business license may be revoked if a *person* possesses with intent to furnish drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

**§33.4516 Tobacco Retailer Permit Not Transferable**

A *police permit* issued under this Division is not transferable.

**§33.4517 Grandfather Clause**

*Convictions* for offenses listed in Section 33.4510 shall not be used to deny an application for a *police permit* under this Division if the date of the *conviction* was prior to the passage of this Division.

**§33.4518 Reporting**

The *Chief of Police* shall, on a yearly basis or as requested by the Public Safety and Neighborhood Services Committee, report to the Public Safety and Neighborhood Services Committee the following information:

- (a) A summary of activity related to the administration and enforcement of this Division; and

- (b) An accounting of all funds received and used for the administration and enforcement of this Division; and
- (c) The estimated rate of illegal sales of *tobacco products* to minors within the City of San Diego.

**§33.4519 Sunset Clause**

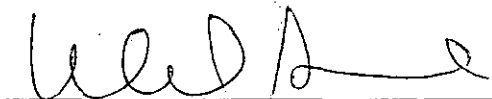
This Division shall be repealed five years from and after the final passage of this Division, unless this section is repealed.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. This ordinance shall take effect and be in force on the one hundred and eightieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Michael J. Aguirre  
City Attorney

RECEIVED  
07 AUG 30 PM 3:05  
CITY CLERK'S OFFICE  
SAN DIEGO, CA

LLP  
06/27/06  
Or.Dept:Police  
O-2006-161



000215

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor